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09/30/85

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II

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In the Matter of	:
	:
SUN CHEMICAL CORPORATION	:
NEWARK, NEW JERSEY 07100	:
NJD002458842	:
	:
	:
Respondent.	:
	:
Proceeding Under Section 3008	:
of the Resource Conservation and	:
Recovery Act	:
	:
-----X	:

COMPLAINT

This administrative proceeding is instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq.

Section 3006(b) of RCRA, 42 U.S.C. §6926(b), provides that the Administrator of the U.S. Environmental Protection Agency ("EPA") may, if certain criteria are met, authorize a State to operate a hazardous waste program in lieu of the federal program. The Administrator authorized the State of New Jersey to operate a program in lieu of the federal program on February 2, 1983. The State of New Jersey received final authorization to administer its hazardous waste program on February 21, 1985. Section 3008 of RCRA, 42 U.S.C. §6928, authorizes EPA to enforce the provisions of the authorized State program.

The Director of the Air and Waste Management Division of the EPA, Region II, Complainant in this proceeding, has determined that Respondent, SUN CHEMICAL CORPORATION, has violated the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E et seq., and the regulations promulgated thereunder, as hereinafter specified:

1. Respondent owns and operates a facility located at:

185 Foundry Street  
Newark, New Jersey 07100

2. By notification dated August 6, 1980, Respondent informed EPA that it conducts activities at the facility involving "hazardous waste," as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. §6903(5) and in 40 CFR §261.3. By application dated November 17, 1980, Respondent requested a permit to conduct its hazardous waste activities.

3. New Jersey Administrative Code (N.J.A.C.) Title 7, Chapter 26, sets standards for hazardous waste treatment, storage and disposal facilities.

4. N.J.A.C. 7:26-9.8 requires the owner or operator of a hazardous waste treatment, storage or disposal facility to prepare and maintain at the facility a copy of a plan to close the facility in a manner that minimizes or eliminates the post-closure release of hazardous waste or waste constituents. This section also sets forth elements that must be included in a closure plan.

5. N.J.A.C. 7:26-9.10 requires that the owner or operator of a hazardous waste facility have a written estimate of the costs of closing the facility. This section also sets forth the elements that must be included in the cost estimate.

6. Section 3007 of RCRA, 42 U.S.C. §6927, allows EPA to request certain information from parties that handle hazardous waste. On or about June 17, 1985, EPA requested Respondent to submit a copy of the closure plan and cost estimate for review.

7. On or about June 24, 1985, Respondent submitted a copy of the closure plan/cost estimate to EPA. EPA's review of the closure plan/cost estimate established that Respondent did not provide sufficient information to meet the requirements of N.J.A.C. 7:26-9.8 and 9.10 respectively. The outstanding deficiencies and/or omissions are attached hereto (see Exhibit A). Therefore, Respondent is in violation of N.J.A.C. 7:26-9.8 and 7:26-9.10.

#### PROPOSED CIVIL PENALTY

In view of the above cited violations, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith proposes the assessment of a civil penalty in the amount of two thousand dollars (\$2,000.00) against Respondent for the violations specified hereinabove as follows:

- for the violation of N.J.A.C. 7:26-9.8	\$ 1,000.00
- for the violation of N.J.A.C. 7:26-9.10	1,000.00
	<hr/>
	\$ 2,000.00

#### COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith issues the following Compliance Order against Respondent herein:

Respondent shall, within thirty (30) days of the effective date of this Compliance Order, submit a closure plan sufficient to meet the requirements of N.J.A.C. 7:26-9.8; and a cost estimate sufficient to meet the requirements of N.J.A.C. 7:26-9.10.

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, a violator failing to take corrective action within the time specified in a Final Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator pursuant to the authority of RCRA.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, and in accordance with EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22, 45 Fed. Reg. 24363 (April 9, 1980) (a copy of which accompanies this Complaint, Compliance Order, and Notice of Opportunity for Hearing), you have the right to request a hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of RCRA, the hearing provided will be noticed and open to the general public, should you specifically request such a public hearing. In the absence of such a specific request, however, public notice of a scheduled hearing will not be published.)

To avoid being found in default, and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written answer to the Complaint, which may include a request for a hearing. Your answer (if any) must be addressed to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, and must be filed within thirty (30) days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Your answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Your failure to file a written answer within thirty (30) days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal hearing to contest any of the facts alleged by the Complainant. Your default will result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to



reflect any settlement agreement reached with you in such conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for an informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Mr. Stuart Deans, Attorney, Waste and Toxic Substances Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278, telephone (212) 264-5340.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued as an alternative to or simultaneously with the adjudicatory hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Final Compliance Order to be issued by the Regional Administrator of EPA, Region II, and signed by you or your representative. Your signing of such Consent Agreement would constitute a waiver of your right to request a hearing on any matter stipulated to therein.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an answer requesting a hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending to EPA - Region II, (Regional Hearing Clerk), P.O. Box 360188M,, Pittsburgh, Pennsylvania 15251, a cashier's or certified check in the amount of the penalty specified in the "Proposed Civil Penalty" section of this instrument. Your check must be made payable to the Treasurer of the United States of America.

DATED:

*September 30, 1981*

COMPLAINANT:

  
CONRAD SIMON

Director  
Air and Waste Management Division  
Environmental Protection Agency  
Region II

TO: Mr. David Thompson  
Operations Manager  
Sun Chemical Corporation  
441 Tompkins Avenue  
Staten Island, New York 10305

cc: John H. Skoviak, Assistant Chief  
Compliance & Enforcement, NJDEP

Gerard Burke, Deputy Director  
Office of Regulatory Services, NJDEP

bcc: Sam Ezekwo, (2AWM-SW)  
Laura Livingston, (2OPM-PA) ✓  
Stan Siegel, (2AWM-SW)  
Stuart Deans, (2ORC-WTS)

CERTIFICATE OF SERVICE

This is to certify that on the 30<sup>th</sup> day of September 1985, I served a true and correct copy of the foregoing Complaint by certified mail to Mr. David Thompson, 441 Tompkins Avenue, Staten Island, New York 10305. I hand-carried the original foregoing Complaint to the Regional Hearing Clerk.

Verna M. Kasny

## EXHIBIT A

SUN CHEMICAL CORPORATION  
EPA I.D. NO. NJD002458842

The following deficiencies and/or omissions have been noted in the Sun Chemical Corporation's closure plan and cost estimate dated 1984.

### Facility Condition

- ° Description of hazardous waste storage tank area including location, size and supporting surface material;
- ° Description of hazardous waste tank including location, size, age, material of construction, etc.;
- ° Description of any discharge containment systems on-site;
- ° Milestone chart for final closure including dates for final generation of waste, completion of inventory removal final decontamination of facility and completion of closure;
- ° Classification of hazardous waste including containerization and removal methods, and amount of each type of waste;
- ° Estimate of the year of closure (use operating or economic life, if applicable);
- ° List of all auxiliary equipment required for waste/soil removal and decontamination processes;
- ° Certification of closure; and
- ° Description of security during closure.

### Removing All Inventory/Waste

- ° Estimate of the amount of contaminated soil.

### Decontamination of Facility

- ° Area of the facility with potential soil contamination or justification for assuming no soil contamination exists (i.e., drum storage area, loading and unloading area, etc.);

- ° Methods and procedures for removing and disposing of contaminated soil, if applicable;
- ° Soil sample test locations, depths, analysis to be conducted and rationale for the selection of these parameters;
- ° Methods and procedures for decontamination of any auxiliary equipment;
- ° Procedures for decontamination of container storage area; and
- ° Methods for disposal of decontamination wastewater/solvent and residues.

#### Cost Estimate

Substantiation and itemization of closure cost estimate to ensure proper estimation. This estimate should include the following items which were omitted from the cost estimate submitted:

- Disposal of decontamination wastewater/solvent and residues
- Soil sampling, analysis and removal
- Professional engineer's certification
- Decontamination equipment, if required
- Decontamination or removal of all equipment including piping, auxiliary equipment, etc.
- Contingency cost
- Security cost
- Manpower: 1) Contractor cost, if applicable  
2) Administrative cost

## ATTACHMENT 1

### REASONING BEHIND PROPOSED PENALTY

Pursuant to 40 CFR §22.14(4) and (5), EPA is providing you this statement explaining the reasoning behind the proposed penalty assessed for each violation cited in this Complaint. Attached to this Complaint you will find the EPA Penalty Computation Worksheet ("worksheet") for each violation for which you have been assessed a proposed penalty. (Attachment 2.)

RCRA Section 3008(a)(3) states that the seriousness of the violation must be taken into account in assessing penalties. The seriousness of a violation is based on the potential for harm and extent of deviation from a statutory or regulatory requirement, which provide the basis for determining the gravity-based penalty.

EPA is providing you with a copy of the Penalty Assessment Matrix from which the Matrix Cell Range was selected (Attachment 3) as well as the following explanation of each entry on the worksheet:

1) For violation of N.J.A.C. 7:26-9.8.

- ° The "Potential for Harm" present in this violation was determined to be Minor because of the fact that the adverse effect non-compliance has on the statutory or regulating purposes or procedures for implementing the RCRA program.

- ° The "Extent of Deviation" present in this violation was determined to be Moderate because of the fact that a closure plan was submitted but significant aspects of closure plan were omitted.



2) For violation of N.J.A.C. 7:26-9.10.

° The "Potential for Harm" present in this violation was determined to be Minor because of the fact that the adverse effect non-compliance has on the statutory or regulating purposes or procedures for implementing the RCRA program.

° The "Extent of Deviation" present in this violation was determined to be Moderate because of the fact that a closure cost estimate was submitted but a significant number of costly items were not shown.

The "Total Penalty Amount" of \$2,000.00 based on the above factors, was determined to be the appropriate penalty for Respondent's violation of N.J.A.C. 7:26-9.8 and 7:26-10.

## ATTACHMENT 2

PENALTY COMPUTATION WORKSHEETCompany Name: Sun Chemical CorporationRegulation Violated: N.J.A.C. 7:26-9.8

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm:	<u>Minor</u>
2. Extent of Deviation:	<u>Moderate</u>
3. Matrix Cell Range:	<u>\$500 - \$1,499</u>
Penalty Amount Chosen:	<u>\$1,000</u>
Justification for Penalty Amount Chosen:	<u>Midpoint of Range</u>
4. Per-Day Assessment:	<u>\$1,000</u>

Part II - Penalty Adjustments

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:	<u>Reserved</u>	<u>N/A</u>
2. Degree of willfulness and/or negligence:	<u>Reserved</u>	<u>N/A</u>
3. History of noncompliance:	<u>Reserved</u>	<u>N/A</u>
4. Other unique factors:	<u>Reserved</u>	<u>N/A</u>
5. Justification for Adjustments:		

\* Percentage adjustments are applied to the dollar amount calculated on line 4, Part I.

PENALTY COMPUTATION WORKSHEET (Cont.)

6. Adjusted Per-Day Penalty (Line 4, Part I & Lines 1-4, Part II):	Reserved
7. Number of Days of Violation:	Reserved
8. Multi-day Penalty (Number of days x Line 6, Part II):	Reserved
9. Economic Benefit of Noncompliance:	Reserved
Justification:	
10. Total (Lines 8 & 9, Part II):	00
11. Ability to Pay Adjustment:	
Justification for Adjustment:	N/A
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):	\$1,000

PENALTY COMPUTATION WORKSHEET

Company Name: Sun Chemical Corporation

Regulation Violated: N.J.A.C. 7:26-9.10

Assessments for each violation should be determined on separate worksheets and totalled.

Part I - Seriousness of Violation Penalty

1. Potential for Harm:	<u>Minor</u>
2. Extent of Deviation:	<u>Moderate</u>
3. Matrix Cell Range:	<u>\$500 - \$1,499</u>
Penalty Amount Chosen:	<u>\$1,000</u>
Justification for Penalty Amount Chosen:	<u>Did not have sufficient estimate</u>
4. Per-Day Assessment:	<u>\$1,000</u>

Part II - Penalty Adjustments

	<u>Percentage Change*</u>	<u>Dollar Amount</u>
1. Good faith efforts to comply/lack of good faith:	<u>Reserved</u>	<u>N/A</u>
2. Degree of willfulness and/or negligence:	<u>Reserved</u>	<u>N/A</u>
3. History of noncompliance:	<u>Reserved</u>	<u>N/A</u>
4. Other unique factors:	<u>Reserved</u>	<u>N/A</u>
5. Justification for Adjustments:		

\* Percentage adjustments are applied to the dollar amount calculated on line 4, Part I.



PENALTY COMPUTATION WORKSHEET (Cont.)

6. Adjusted Per-Day Penalty (Line 4, Part I & Lines 1-4, Part II):	Reserved
7. Number of Days of Violation:	Reserved
8. Multi-day Penalty (Number of days x Line 6, Part II):	Reserved
9. Economic Benefit of Noncompliance:	Reserved
Justification:	
10. Total (Lines 8 & 9, Part II):	00
11. Ability to Pay Adjustment:	
Justification for Adjustment:	N/A
12. Total Penalty Amount (must not exceed \$25,000 per day of violation):	\$1,000

## ATTACHMENT 3

## MATRIX

## Extent of Deviation from Requirement

Potential  
for  
Harm

	MAJOR	MODERATE	MINOR
MAJOR	\$25,000 to 20,000	\$19,999 to 15,000	\$14,999 to 11,000
MODERATE	\$10,999 to 8,000	\$7,999 to 5,000	\$4,999 to 3,000
MINOR	\$2,999 to 1,500	\$1,499 to 500	\$499 to 100